REMARKS

Drawings

Formal drawings are enclosed to replace the informal drawings presently on file. No amendments have been made to the content of the drawings.

Copies of these drawings have been forwarded to the Official Draftsman.

Claims

Claims 1 to 8 remain in the application.

Claim 4 has been amended to more clearly define the invention for which protection is sought.

New claims 9 to 36 have been added to define further aspects of the invention for which protection is sought. These newly added claims are fully supported throughout the specification as originally filed.

Claim Rejections – 35 U.S.C. 103

The Examiner has rejected claims 1 to 3 under 35 U.S.C. 103 (a) as being unpatentable over Vreman et al. (US Patent 6,350,275) in view of the document by Lam entitled "A Summary of Canadian Consensus Guidelines".

Applicant submits that claims 1 to 3 define limitations not obvious in view of the cited combination. In particular, Applicant's claim 1 defines a light therapy device including LEDs and capable of generating 2,500 lux to 7,500 lux at 12 inches.

Vreman does not teach a light therapy device as claimed in claim 1 since it does not teach a light emitting assembly capable of generating 2,500 lux to 7,500 lux at 12 inches. The Examiner has noted this deficiency in Vreman, but has cited Lam as teaching this deficiency. However, Applicant submits that Vreman and Lam are not properly combinabl and, therefore, do not rend r the claims obvious. Applicant notes that there is no suggestion in either of these prior art references to combine them and,

further, if combined, the intended purpose and function of Vreman's invention would be destroyed.

In particular, Vreman teaches light therapy devices intended to be worn by a patient and methods of using these devices. The patent teaches (i) eye glasses and body pads for mounting within 3 cm of the patient and (ii) methods for treating disorders by illuminating a subject using a device worn by and positioned within 3 cm of the patient. The patent is not at all concerned with lux values and does not suggest reference to other documents to determine appropriate lux values.

Lam teaches guidelines for light therapy. In the report the paragraph spanning pages 8 and 9, notes the existence of head mounted units and differentiates them from non-worn light boxes. In that paragraph and again in the section entitled "Recommendations" at page 10, points 1 and 2, it is clear that the Lam recommendations relate to light boxes and not to head mounted units which are intended to be worn by a patient. In particular, Lam notes that "Although efficacy has not been established for head mounted units ..., these devices may be helpful for some patients when light boxes are not available..." (emphasis added). Thus, applicant submits that there is no suggestion in Lam to apply the recommendations contained therein to devices such as those taught by Vreman, which are to be worn by the patient.

Thus, since there is no teaching to support combining these prior art documents, it is submitted that this combination does not render claim 1 obvious.

Further, it is submitted that the combination of these references is not proper, as the purpose and/or function of the Vreman device, as disclosed, would be destroyed by combination with Lam. In particular, as noted above, Vreman teaches light therapy devices intended to be worn by a patient and including LED's positioned within 3 cm of the subject. If the lux values taught by Lam were applied to the device taught by Vreman, Vreman's device would be rendered inoperable, since this intensity of light produced by LEDs and positioned within 3 cm of the subject would most c rtainly cause pain to th yes and be uncomfortably warm on the skin. In fact, applicant submits that, especially with resp ct to ye glass mounted devices, it would be impossible for a cli nt

to withstand treatment by the resultant device. Also, the device would be so large that it could not be mounted on eye glasses and likely would not be suitable for use as a body pad. Again, with reference to the document of Lam, there appears to be no suggestion that the recommendations be combined with a patient-worn device such as that by Vreman.

Thus, in view of the foregoing, it is apparent that the obviousness rejection based on Vreman in view of Lam is defective and should be withdrawn with respect to the claims of the present application. Favorable consideration is requested.

It is also noted, that with respect to claim 3, neither Vreman nor Lam appear to teach a diffuser screen of light diffusing material.

Claim 4 has been rejected under 35 U.S.C. 103(a) as being unpatentable over Vreman et al. in view of the document by Lam entitled "A Summary of Canadian Consensus Guidelines", as applied with respect to claims 1 to 3, and further in view of the brochure of DayLight Technologies, Inc. Applicant respectfully disagrees.

Claim 4 further defines light therapy device as including a therapy calculator. The inclusion of a therapy calculator facilitates treatment by facilitating determination of treatment regime and avoids the need to carry another treatment calculator. Claim 4 has been amended to define that the calculator is programmed. The DayLight Technologies brochure does not teach a programmed calculator, but rather a slide rule type device that requires manipulation by the patient to arrive at a result. Furthermore, the brochure does not teach incorporating their slide rule into a light therapy device or any of the benefits to be achieved thereby. Thus, the DayLight Technologies brochure adds nothing to the Vreman/Lam combination that would render claim 4 obvious.

Claims 5 to 7 have been rejected under 35 U.S.C. 103(a) as being unpatentable over Vreman et al. and Lam, as applied with respect to claims 1 to 3, and further in view of Whitaker (US Patent 5,197,941). Applicant requests reconsideration of this rejection sinc the claims contain various limitations not taught or suggested.

First, applicant submits, as set out above, that the combination of Vreman and Lam fails to render the claims obvious. Whitaker adds nothing alone or in combination with Vreman and Lam which would make obvious the presently claimed invention. Further, claim 7 defines the light emitting assembly as being mounted on the first member while the second member acts as a base. The Examiner cited Whitaker as teaching a housing as claimed in claim 7. Applicant submits, however, that Whitaker describes a device having a base member and a lid. The lid does not house a light emitting assembly, but includes only a reflective surface. A reflective surface is not a light emitting assembly as a presently claimed. Reconsideration is respectfully requested.

Claim 8 has been rejected under 35 U.S.C. 103(a) as being unpatentable over Vreman et al. and Lam, as applied with respect to claims 1 to 3, and further in view of Gerdt (US Patent 6,235,046). Applicant requests reconsideration of this rejection since the claims contain many limitations not taught or suggested by this combination.

First, applicant submits, as set out above, that the combination of Vreman and Lam fails to render the claims obvious. Gerdt adds nothing alone or in combination with Vreman and Lam which would make obvious the presently claimed invention. Further, claim 8 defines the light therapy device housing as being mounted in a vehicle passenger compartment. Gerdt does not teach or suggest such a limitation. Applicant has been unable to locate the reference in Gerdt identified by the examiner that "shows a driver using the device". At best, applicant notes that Gerdt teaches "suppression of melatonin will also reduce the tiredness encountered in long distance car and truck drivers, pilots ...". While this sentence may teach the benefits of melatonin suppression, it does not teach or even suggest mounting a light therapy in a vehicle passenger compartment. In fact, Gerdt teaches either an eye glasses-mounted device or an elaborate device as shown in Figure 5, neither of which are disclosed as being mounted or even used in a vehicle passenger compartment. Therefore, again, reconsideration is respectfully requested.

Thus, in view of the foregoing, applicant respectfully requests that the Examiner reconsider and withdraw the claim rejections under 35 U.S.C. 103(a) based on the various cited references.

Conclusions

In light of the arguments presented by applicant herein, applicant submits that claims 1 to 36 are in a condition for allowance. Applicant respectfully requests that the Examiner withdraw all rejections with regard to the claims in reliance on one or more of the grounds submitted by the applicant.

Respectfully submitted,

Roseann B. Caldwell, Reg. No. 37,077

BENNETT JONES LLP
4500 - 855 - 2nd Street S.W.
Calgary, Alberta CANADA
T2P 4K7

(403) 298-3661

Date: June 30/03